

MEMORANDUM

TO: Governing Board Members

FROM: Carol Ann Whele, Executive Director, Executive Office

DATE: November 16, 2009

**SUBJECT: Denial of Environmental Resource Permit Application 070619-12
Palm Beach Townhomes, Palm Beach County, S26/T44/R43**

Recommendation:

Deny Environmental Resource Permit for Application 070619-12 for a multi-family residential development project known as Palm Beach Townhomes. The applicant has not provided reasonable assurance that the project meets the Conditions for Issuance of Permits listed in Sections 40E-4.301 and 40E-4.302, FAC; Section 4.0 and Section 5.0 of the Basis of Review; and Additional Criteria for Activities in Surface Waters and Wetlands listed in Chapter 373.414 (1), Florida Statutes.

Background:

District staff has evaluated the Environmental Resource Permit (ERP) application for Palm Beach Townhomes and determined that the proposed project does not meet the Conditions for Issuance of Permits as listed in Rules 40E-4.301 and 40E-4.302, FAC, Section 4.0 and Section 5.0 of the Basis of Review and Additional Criteria for Activities in Surface Waters and Wetlands listed in Chapter 373.414 (1), Florida Statutes.

On June 19, 2007, Environmental Resource Permit Application 070619-12 was submitted requesting authorization to construct a concrete retaining wall and to fill a 2.58 acre privately owned submerged parcel located entirely within Lake Worth Lagoon to construct a multi-family residential development consisting of 22 townhome units.

Staff sent three requests for additional information and discussed the project in several meetings and telephone conversations with the applicant in an effort to resolve issues related to the permissibility of this project.

Recommendation for denial of the application for the following reasons:

1. Sufficient information was not provided to demonstrate that the proposed filling of submerged lands and construction and operation of the surface water management system will not result in adverse water quality impacts to Lake Worth Lagoon.
2. The applicant has not demonstrated that practicable design modifications have been implemented to reduce or eliminate adverse direct and secondary impacts to seagrasses and seagrass habitat and will not cause adverse secondary impacts to water resources of Lake Worth Lagoon.
3. The applicant has not demonstrated that the proposed construction, alteration, operation and maintenance of the proposed surface water management system will not adversely impact the value of functions provided to fish and wildlife and listed species.
4. The applicant has not demonstrated that the mitigation proposal will offset the proposed direct and secondary impacts to seagrasses and seagrass habitat.
5. The applicant has not demonstrated that the proposed project will not cause unacceptable cumulative impacts upon wetlands and other surface waters in the same drainage basin.
6. The applicant has not provided reasonable assurances to demonstrate that the project is not contrary to the public interest, including the lack of documentation of any legal right to fill in submerged lands purchased after the repeal of Florida Statute 253.15 on June 11, 1957.

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 Environmental Resource Permitting Division
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